

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY Y. HERRERA,

Plaintiff,

v.

UNKNOWN,

Defendant.

Case No. 1:24-cv-00879-KES-CDB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE A CERTIFICATE OF APPEALABILITY

(Doc. 8)

Petitioner Johnny Herrera is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. The petition seeks review of a sentence imposed upon him in state court. *Id.* at 2. Petitioner claims his sentence should be reduced. *Id.* at 3-4, 7-8. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 15, 2024, the assigned magistrate judge issued findings and recommendations to dismiss the petition, finding that petitioner (1) failed to name the state officer having custody, Doc. 8 at 4, (2) failed to exhaust his administrative remedies, *id.*, and (3) failed to state a claim for relief, in that petitioner failed to allege anything more than a possible error in the application by the state court of state sentencing laws, *id.* at 5-6. The findings and recommendations were served on petitioner. Petitioner had 21 days to file objections thereto. *Id.* at 6.

1 On November 13, 2024, after the 21-day deadline had passed, petitioner filed a motion in
2 which he requested information concerning his case. Doc. 9. In light of petitioner's motion, the
3 assigned magistrate judge extended nunc pro tunc the time for petitioner to file objections to the
4 findings and recommendations, effectively extending the deadline to file objections from
5 November 5, 2024, to December 16, 2024. Doc. 10. The order extending the deadline was
6 served on petitioner, along with a copy of the previously served findings and recommendations.

7 Petitioner did not file any objections to the findings and recommendations and the
8 deadline to do so has passed.

9 In accordance with 28 U.S.C. § 636(b)(1), this Court has conducted a de novo review of
10 this case. Having carefully reviewed the file, the Court finds the findings and recommendations
11 to be supported by the record and proper analysis.

12 Having found that petitioner is not entitled to habeas relief, the Court now turns to
13 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
14 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is
15 allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28
16 U.S.C. § 2253. The Court should issue a certificate of appealability if "reasonable jurists could
17 debate whether (or, for that matter, agree that) the petition should have been resolved in a
18 different manner or that the issues presented were 'adequate to deserve encouragement to proceed
19 further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
20 880, 893 & n.4 (1983)).

21 In the present case, the Court finds that reasonable jurists would not find the Court's
22 determination that the petition should be dismissed debatable or wrong, or that petitioner should
23 be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.

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1 Accordingly:

- 2 1. The findings and recommendations issued on October 15, 2024, Doc. 8, are
3 ADOPTED in full;
4 2. The petition for writ of habeas corpus is DISMISSED;
5 3. The Clerk of Court is directed to close the case; and
6 4. The Court declines to issue a certificate of appealability.
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9 IT IS SO ORDERED.

10 Dated: January 3, 2025


UNITED STATES DISTRICT JUDGE